

## INTERNATIONAL LAW AND WORLD ORDER

SECOND EDITION

In *International Law and World Order*, B. S. Chimni articulates an Integrated Marxist Approach to International Law (IMAIL) combining the insights of Marxism, socialist feminism and postcolonial theory. The book uses IMAIL to systematically and critically examine the most influential contemporary theories of international law including new, feminist, realist and policy-oriented approaches. In doing so, it discusses a range of themes relating to the history, structure and process of international law. The book also considers crucial world order issues and problems that the international legal process has to contend with, including the welfare of weak groups and nations, the ecological crisis and the role of human rights. This extensively revised second edition provides an invaluable, in-depth and updated review of the key literature and scholarship within this field of study. It will be of particular interest to students and scholars of international law, international relations, international politics and global studies.

B. S. CHIMNI is Professor of International Law at the School of International Studies, Jawaharlal Nehru University, India.

# INTERNATIONAL LAW AND WORLD ORDER

A Critique of Contemporary Approaches

SECOND EDITION

B. S. CHIMNI  
*Jawaharlal Nehru University*



CAMBRIDGE  
UNIVERSITY PRESS

Cambridge University Press  
978-1-107-06526-0 — International Law and World Order  
2nd Edition  
Frontmatter  
[More Information](#)

CAMBRIDGE  
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom  
One Liberty Plaza, 20th Floor, New York, NY 10006, USA  
477 Williamstown Road, Port Melbourne, VIC 3207, Australia  
4843/24, 2nd Floor, Ansari Road, Daryaganj, Delhi – 110002, India  
79 Anson Road, #06-04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)  
Information on this title: [www.cambridge.org/9781107065260](http://www.cambridge.org/9781107065260)  
DOI: 10.1017/9781107588196

© B. S. Chimni 2017

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First edition published by Sage (New Delhi) in 1993

Second edition 2017

*A catalogue record for this publication is available from the British Library.*

*Library of Congress Cataloging-in-Publication Data*

Names: Chimni, B. S., 1952– author.

Title: International law and world order: a critique of contemporary approaches / B. S. Chimni, Jawaharlal Nehru University.

Description: Second edition. | New York : Cambridge University Press, 2017. | Includes bibliographical references and index.

Identifiers: LCCN 2016059343 | ISBN 9781107065260 (hardback)

Subjects: LCSH: International law.

Classification: LCC KZ3405.C45 A35 2017 | DDC 341–dc23

LC record available at <https://lccn.loc.gov/2016059343>

ISBN 978-1-107-06526-0 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

## CONTENTS

	<i>Preface to the Second Edition</i>	<i>page xi</i>
	<i>Acknowledgements to the First Edition</i>	xiii
	<i>Foreword to the First Edition</i>	xv
	(RICHARD FALK)	
1	Introduction	1
	I. Objectives	1
	II. Fields of Origin and Reception	6
	III. Omission of Positivist Approach: Reasons and Sketch	10
	IV. Omission of TWAIL: IMAIL Is TWAIL	14
	V. A Word on Marxism and Socialist Feminism	18
	VI. Uses and Limits of Postcolonial Theory	22
	VII. Meaning of World Order: Integrating Five Logics	30
	VIII. Final Words on Form and Content	35
2	The Classical Realist Approach to International Law: The World of Hans Morgenthau	38
	I. Introduction	38
	II. The Realist Theory of International Politics	46
	III. The Realism of Realism	50
	A. On Human Nature	50
	B. On Autonomy of the Political Sphere	53
	C. On Power, National Interest and State	56
	D. On Imperialism	60
	IV. The Realist Theory of International Law	63
	A. The Logic of Capital and International Law	70
	B. International Law as Primitive Law	73
	C. Rules, Interpretation and World Politics	78
	V. International Morality, International Law and International Politics	81

VI. World Community, World State and International Law	88
VII. Classical Realism and the IR-IL Approach	93
VIII. Conclusion	101
3 The Policy-Oriented or New Haven Approach to International Law: The Contributions of Myres McDougal and Harold Lasswell	104
I. Introduction	104
II. Conception of Law and Function of Rules	111
A. Critique of Political Realism	112
B. Critique of Positivism	113
C. Critique of American Legal Realism	116
D. Summing Up: Relationship of Law and Policy	120
III. Indeterminacy of Rules: Semantic and Structural Sources	123
A. Semantic Indeterminacy	124
B. Critique of VCLT	125
C. Words Possess Ordinary Meaning: Function of a Sentence	129
D. Words Possess Ordinary Meaning: Use Theory of Meaning	133
E. Structural Indeterminacy	138
IV. The Intellectual Tasks of Jurisprudence	140
A. The Observational Standpoint	142
B. Clarification of Goal Values	147
C. Description of Past Trends	150
D. Identification of Conditioning Factors	152
E. Projection of Future Trends	153
F. The Invention and Evaluation of Alternatives	155
V. The Process of Decision Making	157
A. Participants	161
B. Perspectives	166
C. Base Values – Strategies	167
D. Outcomes	169
E. Summing Up	170
VI. Testing the Jurisprudence: Legal Regulation of International Coercion	171
VII. Conclusion	174

## CONTENTS

vii

- 4 Richard Falk and the Grotian Quest: Towards a Transdisciplinary Jurisprudence 179
- I. Introduction 179
  - II. Legal Theory: The Intermediate View 183
    - A. On Basis of International Law 186
    - B. On Indeterminacy of Rules 188
  - III. Towards a Just World Order: Diagnosis 192
    - A. Problem of Statism and States System 194
    - B. Industrial Civilization and the Ecological Crisis 202
  - IV. Towards a Just World Order: Transition 211
    - A. Reform from above: 1970–1985 211
    - B. Reform from below: 1985–1999 214
    - C. New Internationalism and Legitimacy Struggles (1999–2015) 217
  - V. The Transition Process and International Law 222
    - A. Reimagining the World Court 224
    - B. Role of Global Civil Society 227
    - C. International Law and Legitimacy Struggles 229
  - VI. The Third World and International Law 232
    - A. Early Years 233
    - B. Later Years 235
    - C. On Sovereignty and Equality of States 237
  - VII. Conclusion 242
- 5 New Approaches to International Law: The Critical Scholarship of David Kennedy and Martti Koskenniemi 246
- I. Introduction 246
  - II. Beginnings: Commonalities 252
  - III. Seeing Like Kennedy: The Internal View 256
    - A. The Idea of Internal Critique 259
    - B. Towards Internal History 265
    - C. Rule of Experts: First Take 272
    - D. On Law and Political Economy 282
    - E. Rule of Experts: Take Two 288
    - F. On Law and War 294
    - G. On Human Rights 297
    - H. On Governance Humanitarianism 300

I.	Contribution to International Law Scholarship	302
J.	Kennedy and Others	304
K.	Conclusion	309
IV.	Writing Like Koskenniemi: Flair and Imagination	312
A.	The Essentials: Theses on International Law	315
B.	The Turn to History	320
C.	From Structure to History	322
D.	Towards a Grand Narrative?	323
E.	European International Lawyers, Colonialism and Cosmopolitan Vision	327
F.	Search for Autochthonous Histories	330
G.	The Turn to Culture of Formalism	333
H.	Comparing and Contrasting	344
I.	TWAIL and 'Culture of Formalism'	344
J.	MAIL and 'Culture of Formalism'	348
K.	FtAIL and 'Culture of Formalism'	349
L.	The Missing Indigenous Peoples	350
M.	MILS and 'Culture of Formalism'	352
V.	Conclusion	355
6	Feminist Approaches to International Law: The Work of Hilary Charlesworth and Christine Chinkin	358
I.	Introduction	358
II.	Delayed Beginnings: Impact of Cold War	364
III.	Different Approaches to Feminism	370
A.	Radical Feminism	372
B.	Critical Legal Feminism	380
C.	Postcolonial and Third World Feminism	386
D.	Liberal (Eclectic) Feminism of Charlesworth and Chinkin	392
E.	Towards Socialist Feminism	400
IV.	Liberal (Eclectic) Feminism and International Law	409
A.	The Structural Critique	410
B.	On State	413
C.	On International Law-Making	416
D.	On Women's Rights	419
E.	On Use of Force	421

## CONTENTS

ix

F. On Peace Building	424
G. Missing International Economic Law	426
H. On International Institutions	430
I. Limits of Liberal Reforms	433
V. Conclusion	436
7 Towards an Integrated Marxist Approach to International Law (IMAIL)	440
I. Introduction	440
II. One Theory, Two Others and Five Logics	443
III. Towards a Marxist Theory of Law	449
A. On Base and Superstructure	449
B. The Views of Karl Renner	455
C. E. P. Thompson and Rule of Law	457
D. The Relative Autonomy of Law: Meaning and Limits	458
E. The Relative Autonomy of International Law: Complicating the Picture	461
IV. The Commodity Form Theory of Law	462
V. The Commodity Form Theory of International Law	468
A. Pashukanis on International Law	468
B. Miéville and Pashukanis	473
VI. A Materialist History of International Law (1600–1985): A Sketch	477
A. Old Colonialism: 1500–1760	481
B. New Colonialism: 1760–1875	486
C. Imperialism: 1875–1945	489
D. Neocolonialism: 1945–1985	496
VII. Nature and Character of Contemporary International Law: The Era of Global imperialism (1985–)	499
A. Integrating Class, Gender, Race	499
B. Integrating ‘Logic of Territory’	504
C. Key Features of Global Imperialism	506
D. Reform or Revolution	517
E. International Rule of Law	522
VIII. Towards an IMAIL Theory of Interpretation	524
A. The Limits of Indeterminacy	525
B. Gadamer on Legal Hermeneutics	527



C. Wittgenstein, Gadamer and Habermas	530
D. Final Reflections	532
IX. IMAIL and Human Rights	534
X. Alternative Futures	543
<i>Bibliography</i>	551
<i>Index</i>	595

## PREFACE TO THE SECOND EDITION

The second edition is more *a new book* than a new edition. The different chapters of the first edition have been substantially revised. New chapters have been added on New Approaches to International Law (NAIL) and Feminist Approaches to International Law (FtAIL). A new theoretical framework has also been advanced incorporating the insights of Marxism, socialist feminism and postcolonial theory. In this light, a chapter on an Integrated Marxist Approach to International Law (IMAIL) replaces the earlier chapter on a Marxist theory of international law.

It is hoped that the new edition will be useful for students of international law and international relations who wish to have a deeper understanding of both disciplines. For between them these approaches raise the most vital epistemological and ontological questions that must concern anyone attempting to explain and understand contemporary international law and world order. Indeed, these approaches question, albeit from different standpoints, every single assumption and belief pertaining to the history, structure and process of international law and world order. They also engage with and discuss the central issues of our times. Therefore, there is no gain in saying that some familiarity with them will be rewarding. While the chapters on individual approaches can be read as standalone chapters, these are also intended to clarify the IMAIL perspective on different themes and issues dealt with by them. Thus, in an important sense the entire book may be read as devoted to the elucidation and elaboration of IMAIL.

I believe that the geographical location of an author has an important influence on how different theories of international law and world order are received and evaluated. It is therefore perhaps worth mentioning that I have had all my formal education in India where I have lived and taught all my life. It colours the way I approach and look at issues of international law and also write about them. I would request the readers to bear this in mind.

In the writing of this edition of the book, I have incurred a great number of debts. It is my pleasant duty to acknowledge them. Above all I wish to acknowledge the enormous debt of gratitude I owe to the Third World Approaches to International Law (TWAAIL) movement. It has been an absolute privilege and honour to be part of the TWAAIL project which has shaped in fundamental ways my thinking on international law and world order. I wish to especially thank fellow travellers Antony Anghie, James Gathii, Usha Natarajan, Obiora Okafor, Karin Mickelson, Vasuki Nesiah, Balakrishnan Rajagopal and Hani Syed for their friendship. I also wish to thank the pioneers of TWAAIL scholarship, especially Georges Abi-Saab, R. P. Anand, Mohammed Bedjaoui, T. E. Elias, Muthuswamy Sornarajah and Christopher Weeramantry for giving me the confidence to chalk out my own path.

There are several individuals who helped in the writing of this edition. Antony Anghie not only commented on the introduction and the chapter on NAIL but also provided moral support throughout the writing of the book. I have turned to him for advice on countless occasions. Prabha Kotiswaran, Vasuki Nesiah and Dianne Otto read and commented on the chapter on feminist approaches to international law, and Siddharth Malvarappu reviewed the chapter on classical realism. I wish to express my heartfelt thanks to all of them.

I would also like to take this opportunity to thank José Alvarez, Hilary Charlesworth, Michael Fakhri, Richard Falk, David Kennedy, Benedict Kingsbury, Susan Marks, Gregor Noll, Yasuaki Onuma, Anne Orford, Akbar Rasulov, Siddharth Malvarappu and Thomas Skouteris for their encouragement and support over the years.

I would be failing in my duty if I did not thank the two anonymous reviewers who recommended the publication of this edition to the Cambridge University Press. Their suggestions on how to improve the first edition were very helpful. I would also like to thank Finola O'Sullivan of Cambridge University Press for her help and guidance in producing this edition. Needless to add, I alone remain responsible for the shortcomings of the book.

Last but not the least I wish to thank my family for their love and affection without which this book would not have come to fruition.

ACKNOWLEDGEMENTS TO  
THE FIRST EDITION

This study captures and incarcerates the moment of self-clarification. If it has assumed the form of a book it is because of the felt absence of any work, written in the developing world, which critically explores the principal contemporary approaches to international law and world order. I am deeply grateful to Professor Richard Falk for agreeing to contribute a foreword. It is my regret that the critical nature of the work prevented me from recording at length the empathy and solidarity he has shown in his writings with the cause of the developing world. He has been for me, as I am sure for many others, an inspirational figure. I would also like to thank Dr Sudipta Kaviraj for the discussions I had with him on a wide range of issues. Finally, I would like to thank my wife for the constant encouragement I received. Needless to add, I alone am responsible for the errors and infelicities.

## FOREWORD TO THE FIRST EDITION

There has, of course, been significant work done by non-Western international law specialists in the several decades since the collapse of the colonial order. But virtually all of this work, even the most explicitly anti-Western, has relied on Western approaches in a relatively uncritical manner. On reflection, this reliance is not surprising. There was a strong tendency for Third World students to receive their advanced graduate training in law, especially international law, from leading universities in Europe and North America. Further, the received scholarship was dominated by Western authors.

As a consequence, the emergence of distinctive modes of thought and analysis failed to accompany the process of decolonisation, or even to follow upon it. Oddly, also, even where intellectual fashions were strongly influenced by Marxist currents of thinking, almost all international law writing emanating from the Third World tried to avoid any ideological imprint. Here again, it is not difficult to find an explanation. International legal work automatically aspired to be scientific in a Western sense, a pattern evident even in the better work of Soviet international lawyers in the period after Stalin. This Soviet work, including that of Grigory Tunkin and Rein Mullerson, relied almost exclusively on non-Marxist scholarship even when intent on defending Soviet policy positions and attacking those of the United States. It was pragmatically oriented towards enabling Soviet bloc participation in the prevailing debates in Western international law circles.

What makes the work of B. S. Chimni so exciting and exceptional is that it clears the way for a jail-break from such lingering intellectual hegemony. His *International Law and World Order; A Critique of Contemporary Approaches* is a double achievement. It is an explicit critique of Western non-Marxist thinking, but it also lays the basis for a genuinely Marxist approach rooted in the realities and projects of the Third World. Chimni displays a real mastery over the complex and diverse material that he discusses, and is impressively fair in presenting criticism, taking real account

of the most serious efforts by the scholars whom he criticises. As one of those, I can report that reading Chimni's book is a learning experience, and does not tempt me to evade criticism with the retort, 'He has got me wrong.' His readings of the work of others is careful and his interpretations illuminating.

Let me try briefly to explain why Chimni seems successfully embarked on a long journey of scholarly liberation. Unlike others who have criticised substance, doctrine, and history, Chimni concentrates on the modes of theorising, pointing to their inadequacies. As such, his book opens the way for new modes, including his own prescriptions for a Marxist jurisprudence informed by and distinct from the sort of statist distortions and polemical imperatives that were characteristic of the Soviet era. Such an orientation strikes me as promising, but by no means exclusive; there are other orientations toward law-in-the-world that do not draw their primary inspiration from the Marxist tradition, yet offer a basis for a progressive and coherent approach to international law and world order. For instance, I continue to work toward the formulation of such a perspective without nearly as explicit affinities as Chimni, while at the same time acknowledging Marxist influences.

Among Chimni's many virtues is his persuasive rehabilitation of Marxist thought as the foundation for a progressive theory of international law. The timing of publication is intriguing. At the very moment when much of the West is celebrating 'the end of history', Chimni is convincingly demonstrating that not only does history persist – really, a rather banal conclusion – but that Marxism, properly regarded, continues to offer the preferred vehicle for its most beneficial embodiment. What Chimni means by Marxism is a rich, varied, and humanist tradition of thought that encompasses the young Marx, Gramsci, Laclau, Poulantzas, and Wallerstein. This Marxist orientation offers the socio-economic grounding for a new jurisprudence.

There is another reason to celebrate the publication of Chimni's book. By taking the trouble to emphasise theoretical approaches, Chimni is implicitly confirming the importance of international law for progressive politics at this time. That is, international law is not reduced to a tool of foreign offices or as a technical area of expertise that has a bearing upon the organisation of international life. For Chimni, international law provides part of the foundation of world order, and as such, needs to be rooted in fundamental thought about society and the state. Such an outlook is particularly responsive to increasing complexity and intensifying environmental hazards of global scope. Without a normatively self-aware

perspective, international law would again certainly become an instrument for legitimising the oppressive features of the current world order, a role historically played to fullest extent during the period of colonial rule and capitalist expansion beyond Europe.

In these early post-Cold War years there is already evident a strong and conscious disposition to appropriate international law as a hegemonic instrument of the North, especially the United States. During the 1990 build-up to the Gulf War, George Bush repeatedly insisted that a prime motive for reversing Iraq's aggression against Kuwait was the importance of strengthening international law. Taken in isolation such an assertion is plausible, but if accompanied by the most minimal recall of the United States' own recourse to force on a unilateral basis (for instance, the military intervention in Panama just months earlier) or of the refusal to bring pressure on Israel to withdraw from the occupied territories of West Bank, Gaza, and East Jerusalem or on Indonesia to quit East Timor or West Papua, then the level of hypocrisy is crass. Yet what is more disturbing, than the American project to appropriate international law on behalf of a comprehensive framework of double standards is the acquiescence of the rest of the world, especially countries in the South. Such acquiescence undoubtedly reflects a mood of demoralisation, including the conviction that the United States is in unchallengeably firm control of the institutional and normative structures of international political and economic life, possibly sharing such control, to the extent necessary, with other centres of capital in the North, especially Japan and Europe.

Fortunately, there are alternative lines of response that create a more hopeful and far less deterministic prospect for the future. One such line, about which Chimni is helpfully critical, is the realisation by transnational political and social forces that international law can be used counter-hegemonically. An illustration of this effort to democratise the application of international law goes back to Bertrand Russell's idea of constituting a tribunal of prominent citizens to assess the charges of war crimes being made in the late 1960s against US political and military leaders during the Vietnam War. International law in such an arena becomes a valuable instrument of critical pedagogy and delegitimation. The attempt of such enactments is not to indict and punish the individuals charged in any substantive sense, but to give structure and substance to progressive and symbolic attacks on contested international policies and practices. The Permanent Peoples Tribunal, centred in Rome, has regularly, since 1976, held sessions that assessed and condemned interventions by the North in the South and the use of the IMF and World Bank in oppressive roles.

A recent instance of reliance on international law in the service of radical politics has been the Gulf War Crimes Tribunal constituted in 1992 under the inspirational leadership of Ramsey Clark. In short, these events suggest that peoples as well as states can invoke international law, and have been doing so with particular effectiveness in such areas as the protection of human rights and of environmental quality.

Chimni's progressive jurisprudence is a second line of defence against new hegemonic designs. It opens the way for a comprehensive rethinking of the substance and role of international law, including a critique and repudiation of any legal claims that are not based on mutuality. It cuts through mystifications, and calls for the articulation of a liberation jurisprudence (in this regard, curiously, legal thought has lagged behind even theology!), that is, a framework of laws and procedures dedicated to human well-being, including the enterprise of restructuring the world economy.

It is only fair to acknowledge that Chimni has started the job that now needs to be carried further, hopefully by himself, but also by others. After critique comes construction. This book achieves clarity at the critical level, but it is still enmeshed in Western narratives about the state of the world and the place of international law and international lawyers in it. There is, of course, a continuing need for critical discourse of both a specific and general nature, especially to identify and discredit attempts to impose regimes of double standards on behalf of Western interests: a good current challenge would be a critical account of the US-led effort to insist selectively on non-proliferation of nuclear weaponry without being willing itself to accept even such minimal constraints on its own nuclearism as a Comprehensive Test Ban or a No First Use Pledge. But possibly even more important than criticism at this stage would be a jurisprudential account of international law and world order that carried out positively the critical mandate that Chimni brilliantly fulfils in this book. Hence, as we read this book with appreciation and admiration, we await his next in a spirit of expectation, and given the tormented condition of much of humanity, of urgency.

Richard Falk  
Princeton, New Jersey  
1992